IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 13475 of 2007(D)

OS.188/2005 of I ADDL.SUB COURT,ERNAKULAM

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PETITIONER:

RAJESWARI, AGED 24 YEARS,
D/O.PANKAJAKSHY, PALLATH VEEDU, (ANTHAPURATH),
PALARIVATTOM, POONITHURA VILLAGE.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS:

JACOB, S/O.JOSEPH,
AGED 42 YEARS, PARAMBATHUSSERY,
PADIVATTOM, EDAPPALLY SOUTH VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.13475 OF 2007 D

Dated this the 28th May, 2007.

JUDGMENT

This writ petition is filed seeking a direction to the I Additional Sub Court, Ernakulam to consider issue No:1 as a preliminary issue. The suit is one for return of the amount due under a contract of sale. According to the writ petitioner the contract was entered into about a decade back and the time for enforcing the agreement is barred by limitation and, therefore, on the basis of that agreement the plaintiff is not entitled to realise any amount. The question whether it is barred by limitation or not may be a question of pure law or may be a mixed question of fact and law. If it is a mixed question of fact and law it may not be possible for the court to try and dispose of because it requires evidence. So, depending upon the rival contention of the parties, the court is bound to consider whether it can be taken up as a preliminary issue on the question of limitation and dispose of. Therefore, the writ petition is disposed of with the following directions:-

2. The I Additional Subordinate Judge's Court, Ernakulam is directed to consider whether issue No:1 can be considered as a preliminary issue and it can be disposed of as a preliminary issue on the question of limitation. If

possible it may be heard and disposed of. Both sides may be heard before adjudicating the matter on the issue.

Writ petition is disposed of accordingly.

M.N. KRISHNAN
Judge

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